

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 – NEW ENGLAND REGION

SECOND CONSENT DECREE FOR  
REMEDIAL DESIGN/REMEDIAL ACTION  
AT  
THE DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
DOVER, NEW HAMPSHIRE

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

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Defendants.

CIVIL ACTION NO. 1:92-CV-406-M

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Dover Municipal Landfill Superfund Site in Dover, New Hampshire (the “Site”), together with

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accrued interest; and (2) performance of studies and response work by the Defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New Hampshire (the “State”) on September 12, 1991 and January 3, 2007 of negotiations with potentially responsible parties regarding the Remedial Design and Remedial Action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to the 1993 Consent Decree and this Amended Consent Decree.

D. The State also filed a complaint against the Defendants in this Court alleging that the Defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, Section 7003 of RCRA, 42 U.S.C. § 6973, New Hampshire RSA 147-B, and New Hampshire common law of nuisance for (1) reimbursement of costs incurred or to be incurred by the State in connection with the Site; (2) performance of response work at the Site, including post remedial monitoring and operation and maintenance; (3) declaration of Defendants’ liability for Future Response Costs and Oversight Costs; and (4) such other relief as the Court finds appropriate.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Federal natural resource trustees on December 20, 1991, December 5, 2006, and December 7, 2006 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of the 1993 Consent Decree and this Amended Consent Decree.

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F. The Defendants that have entered into this Amended Consent Decree (“Settling Defendants”) do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaints.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40666.

H. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, in 1984, the State, under a cooperative agreement with EPA, commenced a Remedial Investigation (“RI”) for the Site pursuant to 40 C.F.R. § 300.430.

I. The State issued a Remedial Investigation Report on November 10, 1988.

J. A group of Potentially Responsible Parties (“PRPs”) commenced a Feasibility Study (“FS”) and a Field Elements Study (“FES”) in July 1988 pursuant to an Administrative Order by Consent with EPA and the State.

K. The FS and the FES were completed by this group of PRPs in February 1991.

L. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the issuance of the FS Report and of the Proposed Plan for remedial action in March 1991, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

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M. On September 10, 1991, EPA issued a Record of Decision (the “1991 ROD”) for the Site calling for, inter alia, source control (through consolidation of contaminated sediment and capping of the landfill, and construction and operation of a groundwater leachate diversion/interceptor trench) and management of migration (through extraction and treatment of groundwater contamination in the Southern Plume and natural attenuation of groundwater contamination in the Eastern Plume).

N. On July 23, 1993, the Court entered the 1993 Consent Decree that was lodged by the United States and the State to address the cleanup of the Site by implementing certain provisions of the 1991 ROD.

O. The 1993 Consent Decree, which attached the 1993 Statement of Work (“the 1993 SOW”) as an appendix, called for, inter alia, consolidating sediments from the drainage swale, recontouring and capping of the landfill, and treating the contaminated leachate/groundwater. The 1993 Consent Decree and the 1993 SOW did not address the remediation of the contaminated groundwater in the Southern or Eastern Plumes, as selected in the 1991 ROD. Instead, the United States and the State reserved their rights with respect to such groundwater contamination, and the 1993 Consent Decree required the Work Settling Defendants to establish an environmental monitoring plan for the Eastern and Southern Plumes, as set out in the 1993 SOW, and to meet all Performance Standards, including cleanup levels, at the Point of Compliance (as that term was defined in the 1993 SOW).

P. Under the 1993 Consent Decree, the Cash-Out Settling Defendants paid to the United States \$288,500 and to the State \$13,000 in reimbursement of response costs incurred by the United States and the State, respectively, with regard to the Site. In

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addition, the Cash-Out Settling Defendants paid \$1,148,000 to the Dover Landfill Remedial Action Trust Fund (“Trust Fund”), established by a trust agreement (the “Trust Agreement”) executed by the Settling Defendants pursuant to the 1993 Consent Decree, to finance their obligations under the 1993 Consent Decree. Notwithstanding these payments, the Cash-Out Settling Defendants did not settle their liability with respect to the remediation of the contaminated groundwater in the Southern and Eastern Plumes, which was not addressed in the 1993 Consent Decree.

Q. In accordance with the 1993 Consent Decree, the Work Settling Defendants paid to the United States \$370,000 and to the State \$75,000 in reimbursement of response costs (up to the limits set forth in the 1993 Consent Decree) incurred in overseeing the Work Settling Defendants’ performance of work pursuant to the 1993 Consent Decree.

R. As part of this obligation under the 1993 Consent Decree, the Work Settling Defendants submitted a Source Control Pre-Design Investigation (“SC-PDI”) in 1995 regarding the capping component of the 1991 ROD.

S. The SC-PDI served as a basis of the remedial design for the cap and the groundwater interceptor/diversion trench, as required by the 1991 ROD. A 100% remedial design was submitted by the Work Settling Defendants in December 1996; however, it was not approved pending consideration of a new approach to the source control remediation.

T. A number of subsequent studies, performed independently by the Work Settling Defendants, followed the SC-PDI and were issued in 1996. These reports further described the hydrogeology of the Site and discussed treatability studies to address



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groundwater contamination using *in situ* bioremediation and air stripping. Based on communication between EPA and the Work Settling Defendants, a new, *in situ* bioremediation approach was developed for consideration as an alternative to the source control component of the 1991 ROD.

U. On November 21, 1997, EPA, the State and a group of the Work Settling Defendants entered into an Administrative Order by Consent and Agreement (“1997 AOC”) to implement a bioremediation field study project, to evaluate and remediate a portion of the Site known as the perimeter drainage ditch and swale, and to pay certain EPA and State reimbursable costs for the Site. To allow the group of Work Settling Defendants to perform these tasks, EPA, the State and a group of the Work Settling Defendants entered into a Modification of the Work Schedule under the 1993 Consent Decree (“1997 Modification”) suspending certain work obligations under the 1993 Consent Decree.

V. The bioremediation field study project began in 1997. The project sought to mineralize or immobilize Site contaminants by injecting amendments into the groundwater. The bioremediation field study project concluded in 2001. EPA and the State did not concur with the opinions, findings, or conclusions offered in the Draft Final Bioremediation Pilot Assessment, dated December 28, 2001.

W. On January 30, 2004, the Work Settling Defendants submitted a Revised Focused Feasibility Study (“RFFS”) proposing, among other things, to change the source control component of the 1991 ROD from capping and leachate diversion/interception to construction and operation of an air sparging trench.

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X. EPA, in consultation with the State, issued a Focused Feasibility Study Addendum (a.k.a. Addendum to the RFFS) to serve as the Agencies' interpretation of the data provided in the RFFS. In June 2004, EPA prepared an Amended Proposed Plan, which proposed the construction and operation of an air sparging trench as a source control remedy, with a contingency to implement the 1991 source control remedy in the event the air sparging trench fails. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published a notice of availability for public review of the Amended Proposed Plan providing for amending the source control portion of the selected remedy as outlined in the 1991 ROD. EPA provided an opportunity for written and oral comments from the public as part of the administrative record upon which the Director of the Office of Site Remediation and Restoration based the selection of an amended source control portion of the remedial action.

Y. On September 30, 2004, EPA, with State concurrence, issued an Amended Record of Decision (the "2004 AROD") for the Site that amends the source control portion of the selected remedy as outlined in the 1991 ROD. The 2004 AROD provides for, inter alia, construction and operation of an air sparging trench with a contingency for implementation of the 1991 ROD's source control remedy. The 2004 AROD also incorporates additional requirements to address sediments and air remediation but does not change the remedy for management of migration of groundwater in the Eastern or Southern Plumes. The 2004 AROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

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Z. Both the 1991 ROD and the 2004 AROD provide for the protection of human health and the environment by providing for source control and management of migration of groundwater through remedial action, long-term monitoring, and institutional controls. The 2004 AROD and the 1991 ROD are attached to this Amended Consent Decree as Appendices A and A-1, respectively.

AA. EPA, the State and the Settling Defendants (collectively “the Parties”) now desire to enter this Amended Consent Decree to establish the Work Settling Defendants’ obligations to implement the selected remedy as set forth in the 2004 AROD, in accordance with the Statement of Work (the “2007 SOW”), which is attached to this Amended Consent Decree as Appendix B.

BB. The Parties have agreed to enter into this Amended Consent Decree and 2007 SOW to modify the obligations of the Settling Defendants to perform certain response actions and to reimburse certain costs to the United States and the State. The Parties agree that this is a material modification to the 1993 Consent Decree and the 1993 SOW, and that this Amended Consent Decree shall supersede the 1993 Consent Decree. The Parties also agree that Paragraph 35 of the 1997 AOC shall no longer be effective upon the entry of this Amended Consent Decree.

CC. Since the entry of the 1993 Consent Decree, one of the Work Settling Defendants, Davidson Interior Trim/Textron (“Davidson”), at the time a division of a subsidiary of Textron Inc., was sold to Collins & Aikman Corporation and its subsidiary. Subsequently, Collins & Aikman Corporation and Davidson’s successor, Collins & Aikman Automotive Interiors, Inc. (hereinafter collectively referred to as “C&A”), filed a Chapter 11 bankruptcy petition with the United States Bankruptcy Court for the Eastern

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District of Michigan, Southern Division, on May 17, 2005. The bankruptcy court issued a final confirmation order authorizing a joint plan of Collins & Aikman Corporation and its debtor subsidiaries on July 18, 2007 (Case No. 05-55927 (SWR); Docket No. 7827). Accordingly, the Parties recognize that C&A is not a party to this Second Consent Decree. Following C&A's bankruptcy filing, certain Work Settling Defendants made a demand on Textron Inc. pursuant to a guaranty it signed in 1992 ("Guaranty") in consideration of the execution and delivery to EPA of the 1993 Consent Decree on behalf of its then subsidiary, Davidson. As part of this settlement, the Work Settling Defendants have agreed to assign to EPA any and all rights they may have under the Guaranty in the event of a Work Takeover pursuant to Paragraph 93, and Textron Inc. has consented to such assignment.

DD. Based on the information presently available to EPA and the State, EPA and the State believe that the Work will be properly and promptly conducted by the Work Settling Defendants if conducted in accordance with the requirements of this Amended Consent Decree and its appendices.

EE. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the 2004 AROD and, if applicable, the 1991 ROD, and the Work to be performed by the Work Settling Defendants shall constitute a response action taken or ordered by the President.

FF. The Parties recognize, and the Court by entering this Amended Consent Decree finds, that this Amended Consent Decree has been negotiated by the Parties in good faith, that implementation of this Amended Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the

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Parties, and that this Amended Consent Decree is fair, reasonable, and consistent with the purposes of CERCLA.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b), and pendent jurisdiction over the claims asserted by the State arising under the laws of New Hampshire. This Court also has personal jurisdiction over the Settling Defendants. For the purposes of this Amended Consent Decree and the underlying complaints, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Amended Consent Decree or this Court's jurisdiction to enter and enforce this Amended Consent Decree. The Complaint states claims against Settling Defendants upon which relief may be granted.

III. PARTIES BOUND

2. This Amended Consent Decree applies to and is binding upon the United States and the State and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendant's responsibilities under this Amended Consent Decree.

3. Work Settling Defendants shall provide a copy of this Amended Consent Decree to each contractor hired to perform the Work (as defined below) required by this Amended Consent Decree and to each person representing any Settling Defendant with

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respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Amended Consent Decree. Work Settling Defendants or their contractors shall provide written notice of the Amended Consent Decree to all subcontractors hired to perform any portion of the Work required by this Amended Consent Decree. Work Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Amended Consent Decree. With regard to the activities undertaken pursuant to this Amended Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Work Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Amended Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Amended Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“1991 ROD” or “Record of Decision” shall mean the EPA Record of Decision relating to the Site, signed on September 10, 1991 by the Regional Administrator, EPA Region 1 – New England Region, and all attachments thereto. The 1991 ROD is attached to this Amended Consent Decree as Appendix A-1.

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“1993 Consent Decree” shall mean the Consent Decree that was entered by the Court on July 23, 1993 in this civil action, Civil Action No. 1:92-CV-406-M.

“1993 SOW” or “1993 Statement of Work” shall mean the Statement of Work attached as Appendix B to the 1993 Consent Decree. The 1993 SOW is attached to this Amended Consent Decree as Appendix B-1.

“2004 AROD” or “Amended Record of Decision” shall mean the Amended Record of Decision signed on September 30, 2004 by the Director, Office of Site Remediation and Restoration, EPA Region 1 – New England Region, and all attachments thereto. The 2004 AROD amends the 1991 ROD while referencing portions of the 1991 ROD. The 2004 AROD is attached to this Amended Consent Decree as Appendix A. If a conflict arises between the 1991 ROD and the 2004 AROD, the 2004 AROD shall control.

“2007 SOW” or “2007 Statement of Work” shall mean the Statement of Work for the Remedial Design, Remedial Action, and Operation and Maintenance at the Site to implement the remedy selected in the 2004 AROD. The 2007 SOW is attached to this Amended Consent Decree as Appendix B. If a conflict arises between the 2007 SOW and the 1993 SOW, the 2007 SOW shall control.

“Amended Consent Decree” or “Second Consent Decree” shall mean this Second Consent Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Second Consent Decree and any appendix, this Second Consent Decree shall control.

“Best Efforts” for purposes of Section IX shall include payment of reasonable sums of money.

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“Cash-Out Settling Defendants” shall mean the Settling Defendants listed in Appendix F.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Amended Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Dover Municipal Landfill Superfund Site Special Account” shall mean the special account established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Dover Municipal Landfill” or “Landfill” shall mean the current areal extent of the Dover Municipal Landfill, encompassing approximately 55 acres and located near the intersection of Toland and Glen Hill Roads in Dover, Strafford County, New Hampshire; the Landfill shall also include the drainage ditch surrounding that approximately 55 acre area. The Landfill is depicted generally on the map attached as Appendix C.

“Eastern Plume” shall mean the contaminated groundwater which has migrated from the landfill in an easterly direction towards the Cocheco River in that area generally depicted on a map attached as Appendix C.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.



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“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and the State incur in reviewing or developing plans, reports and other items pursuant to this Amended Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Amended Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs of the risk assessment performed by EPA as set out in the SOW and the ROD following attainment of cleanup levels, the costs incurred pursuant to Sections VI, VII, IX (including, but not limited to, attorneys fees and the amount of just compensation), XIV, XV, and Paragraph 93 of Section XXI (Covenants Not to Sue by Plaintiffs). Future Response Costs shall also mean all costs, including, but not limited to, direct and indirect costs, that the United States and the State incur in: overseeing any other work conducted by the Work Settling Defendants in connection to the Site; preparing and issuing any new or amended remedy decision document(s) including, but not limited to, any Action Memorandum, Explanation of Significant Difference, or Record of Decision Amendment; and negotiating, preparing and filing of any subsequent amendments to this Amended Consent Decree or modifications to the 2007 SOW. Future Response Costs shall also include all costs, including direct and indirect costs, paid by the United States and the State in connection with the Site between May 27, 2007 and the effective date of this Amended Consent Decree and all Interest on the Past Response Costs from May 27, 2007 to the date of payment of the Past Response Costs.

“Institutional Controls” shall mean deed restrictions or other requirements and controls developed for one or more of the following purposes: 1) to restrict the use of groundwater at the Site prior to the attainment of Performance Standards; 2) to limit

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exposure to Waste Material at the Site; 3) to ensure non-interference with the performance of the Work; and 4) to ensure the integrity and effectiveness of the Work.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

“NHDES” shall mean the New Hampshire Department of Environmental Services and any successor departments or agencies of the State.

“Operation and Maintenance” or “O&M” shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plans approved or developed by EPA pursuant to this Amended Consent Decree and the 2007 SOW.

“Owner Work Settling Defendants” shall mean the Settling Defendants listed in Appendix E.

“Paragraph” shall mean a portion of this Amended Consent Decree identified by an arabic numeral or an upper case letter.

“Parties” shall mean the United States, the State of New Hampshire, and the Settling Defendants.

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“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs and Interest, that the United States and the State incurred and paid with regard to the Site from May 1, 2007 to May 26, 2007, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and the costs related to the negotiation, preparation, and filing of this Amended Consent Decree.

“Performance Standards” shall mean those cleanup standards, standards of control, cleanup levels, treatment standards, Institutional Controls, and other substantive requirements, criteria or limitations set forth in the 2007 SOW and the 2004 AROD.

“Plaintiffs” shall mean the United States and the State of New Hampshire.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

“Remedial Action” shall mean those activities, excluding Operation and Maintenance, to be undertaken by the Work Settling Defendants to implement the 2004 AROD, in accordance with the 2007 SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

“Remedial Action Work Plans” shall mean the documents, including accompanying Project Operations Plans, developed pursuant to Paragraphs 13(d) and 13(e) of this Amended Consent Decree and approved by EPA, and any amendments thereto.

“Remedial Design” shall mean those activities, including Pre-Design Investigations, to be undertaken by the Work Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plans and other plans approved by EPA.

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“Remedial Design Work Plans” shall mean the documents, including accompanying Project Operations Plans, developed pursuant to Paragraphs 13(a) and 13(b) this Amended Consent Decree and approved by EPA, and any amendments thereto.

“Section” shall mean a portion of this Amended Consent Decree identified by a roman numeral.

“Settling Defendants” shall mean those parties identified in Appendices D (Non-Owner Work Settling Defendants), E (Owner Work Settling Defendants), and F (Cash-Out Settling Defendants).

“Site” shall mean the Dover Municipal Landfill Superfund Site, including the Dover Municipal Landfill as defined above, the drainage swale extending from the Landfill to the Cocheco River, all areas adjacent to the Landfill where contamination has migrated or been deposited, and all areas in very close proximity to the contamination necessary for implementation of the Work. The Site is depicted generally on the map attached as Appendix C.

“State” shall mean the State of New Hampshire.

“Southern Plume” shall mean the contaminated groundwater which has migrated from the Landfill in a southerly direction, towards the Bellamy Reservoir in that area generally depicted on a map attached as Appendix C.

“Supervising Contractor” shall mean the principal contractor retained by the Work Settling Defendants to supervise and direct the implementation of the Work under this Amended Consent Decree.

“Trust Fund” shall mean the trust established by a trust agreement (the “Trust Agreement”) and created by the Settling Defendants pursuant to the 1993 Consent Decree

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to finance their obligations under the 1993 Consent Decree, as amended by this Amended Consent Decree, to be called the Dover Landfill Remedial Action Trust Fund.

“United States” shall mean the United States of America.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any “hazardous waste” or “hazardous materials” under New Hampshire RSA 147-B:2, VII or VIII; and (4) any “hazardous material” under New Hampshire RSA 147-A:2, VIII.

“Work” shall mean all activities Settling Defendants are required to perform under this Amended Consent Decree, the 2004 AROD and the 2007 SOW.

“Work Settling Defendants” shall include all those Settling Defendants listed in Appendix D (Non-Owner Work Settling Defendants) and Appendix E (Owner Work Settling Defendants).

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Amended Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendants and to reimburse Past and Future Response Costs of the Plaintiffs.

6. Commitments by Settling Defendants

a. Work Settling Defendants shall finance and perform the Work in accordance with this Amended Consent Decree and all plans, standards, specifications, and schedules set forth in or developed and approved by EPA pursuant to this Amended

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Consent Decree. Work Settling Defendants shall also reimburse the United States and the State for Past Response Costs and certain Future Response Costs as provided in this Amended Consent Decree. Cash-Out Settling Defendants agree to the terms of this Amended Consent Decree.

b. The obligations of Work Settling Defendants to finance and perform the Work are joint and several among the Work Settling Defendants. The obligation of the Work Settling Defendants to pay amounts owed by the Work Settling Defendants to the United States and the State under this Amended Consent Decree is joint and several among the Work Settling Defendants. In the event of the insolvency or other failure of any one or more Work Settling Defendants to implement the Work Settling Defendants' obligations under this Amended Consent Decree, the remaining Work Settling Defendants shall complete all such requirements.

7. Compliance With Applicable Law

All activities undertaken by Work Settling Defendants pursuant to this Amended Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Work Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the 2004 AROD and the 2007 SOW. The activities conducted pursuant to this Amended Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e) and Section 300.400(e) of the NCP, 40 C.F.R. § 300.400(e), no permit shall be required

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for any portion of the Work conducted entirely on-site. This Paragraph shall not be interpreted to relieve the Work Settling Defendants of their agreement to obtain a Groundwater Management Permit from the State pursuant to the 2007 SOW. Where any portion of the Work that is conducted off-site requires a federal, state, or local permit or approval, Work Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Work Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Amended Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. All hazardous waste, as defined under Section 1004(5) of RCRA, 42 U.S.C. § 6904(5), which Work Settling Defendants generate in performance of the Work shall be managed by the Work Settling Defendants in accordance with the NCP, including but not limited to the RCRA requirements relating to the use and signing of manifests. Neither the United States, EPA, the State nor their representatives shall be listed as the generator on manifested shipments of hazardous waste generated during performance of the Work.

d. This Amended Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice of Obligations to Successors-in-Title

a. Within fifteen (15) days after the entry of this Amended Consent Decree, the Owner Work Settling Defendant(s) shall record a certified copy of this Amended Consent Decree with the Registry of Deeds or other appropriate office,

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Strafford County, State of New Hampshire. Thereafter, each deed, title, or other instrument conveying an interest in the owned property included in the Site shall contain a notice stating that the property is subject to this Amended Consent Decree and any lien retained by the United States and shall reference the recorded location of the Amended Consent Decree and any restrictions applicable to the property under this Amended Consent Decree.

b. The obligations of each Owner Work Settling Defendant with respect to the provision of access and institutional controls under Section IX (Access and Institutional Controls) shall be binding upon any and all such Settling Defendants and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within fifteen (15) days after the entry of this Amended Consent Decree, each Owner Work Settling Defendant shall record at the Registry of Deeds or other appropriate office where land ownership and transfer records are maintained for the property a notice of obligation to provide access under Section IX (Access and Institutional Controls) and related covenants. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. Any Owner Work Settling Defendant and any Successor-in-Title shall, at least thirty (30) days prior to the conveyance of any such interest, give written notice of this Amended Consent Decree to the grantee and written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Amended Consent Decree was given to the grantee. In the event of any such conveyance, the Settling Defendants' obligations under this Amended



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Consent Decree, including their obligations to provide or secure access pursuant to Section IX, shall continue to be met by the Settling Defendants. In addition, if the United States and the State approve, the grantee may perform some or all of the Work under this Amended Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the Settling Defendants to comply with the Amended Consent Decree.

d. Work Settling Defendants shall not use any portion of the Site in any manner that EPA determines would adversely affect the integrity of any containment system, treatment system, or monitoring system installed pursuant to this Amended Consent Decree.

VI. PERFORMANCE OF THE WORK BY WORK SETTTLING DEFENDANTS

10. In order to expedite the design of the Remedial Action at the Site, Work Settling Defendants agree to commence upon lodging of the Amended Consent Decree with the Court the Remedial Design activities as described herein and in the 2007 SOW. In the event that Work Settling Defendants complete such Remedial Design activities prior to entry of the Amended Consent Decree by the Court, nothing herein shall obligate Work Settling Defendants to commence Remedial Action activities prior to entry of this Amended Consent Decree by the Court. All Future Response Costs incurred prior to the entry of the Amended Consent Decree shall be reimbursed after entry in accordance with Section XVI.

11. All Remedial Design activities to be performed by Work Settling Defendants pursuant to this Amended Consent Decree shall be under the direction and supervision of a qualified contractor. Within thirty (30) days after receipt of notice of the

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lodging of this Amended Consent Decree, the Work Settling Defendants shall notify EPA and the State, in writing, of the name, title, and qualifications of the Supervising Contractor to be used in carrying out the Remedial Design activities to be performed pursuant to this Amended Consent Decree. Work Settling Defendants shall notify the EPA and the State of the names of any other contractors and/or subcontractor proposed within sixty (60) days from the receipt of notice of lodging of this Amended Consent Decree. Selection of any such contractor shall be subject to disapproval by EPA, after consultation with the State. If EPA disapproves of the selection of any contractor, the Work Settling Defendants shall submit a list of contractors, including their qualifications, to EPA and the State within twenty-one (21) days of receipt of the disapproval of the contractor previously selected. Upon EPA's response, the Work Settling Defendants may at their election select any one not disapproved on the list. After selection of a contractor, Work Settling Defendants shall notify EPA and the State of the name of the contractor within fourteen (14) days following receipt of EPA's response.

12. All Remedial Action and Operation and Maintenance activities to be performed by the Work Settling Defendants pursuant to this Amended Consent Decree shall be under the direction and supervision of a qualified contractor. Consistent with the time periods and procedures established in the 2007 SOW, the Work Settling Defendants shall notify EPA and the State in writing of the name, title and qualifications of the Supervising Contractor and the names of contractors and/or subcontractors proposed to be used in carrying out the Remedial Action activities and/or the Operation and Maintenance activities to be performed pursuant to this Amended Consent Decree.

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Selection of any such contractor and/or subcontractor shall be subject to disapproval by EPA in accordance with the provisions of Paragraph 11.

13. The following Work shall be performed by Work Settling Defendants:

a. In accordance with the time periods specified in the 2007 SOW, the Work Settling Defendants shall submit for review, modification, and/or approval by EPA, after opportunity for review and comment by the State, Remedial Design Work Plans. The Remedial Design Work Plans shall be developed in conformance with the 2004 AROD, the 2007 SOW and EPA Superfund Remedial Design and Remedial Action Guidance (OSWER Dir. # 9355.0-4A, June 1986), EPA Remedial Design/Remedial Action Handbook (OSWER Dir. # 9355.0-4B, June 1995), and any additional guidance documents provided by EPA to Settling Defendants prior to approval of the Remedial Design Work Plans.

b. The Remedial Design Work Plans shall include the documents specified in the 2007 SOW, and shall contain schedules in accordance with the time limits specified in the 2007 SOW for design of the Remedial Action.

c. Work Settling Defendants shall implement the Work detailed in the Remedial Design Work Plans upon their approval or modification by EPA pursuant to the procedures in Section XI. Unless otherwise directed by EPA, the Work Settling Defendants shall not commence field activities until approval by EPA of these Remedial Design Work Plans. Upon such approval, these Remedial Design Work Plans and any submissions required thereunder or under this Amended Consent Decree shall be enforceable under this Amended Consent Decree. All Remedial Design activities shall be conducted in accordance with the National Contingency Plan, the EPA Superfund

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Remedial Design and Remedial Action Guidance, the EPA Remedial Design/Remedial Action Handbook, any additional guidance provided by EPA prior to the initiation of those activities, and the requirements of this Amended Consent Decree, including the standards, specifications, and schedule contained in the 2007 SOW and these Remedial Design Work Plans.

d. In accordance with the time periods specified in the 2007 SOW, Work Settling Defendants shall submit for review, modification and/or approval by EPA, after opportunity for review and comment by the State, work plans for the Remedial Action and Operation and Maintenance at the Site (“Remedial Action Work Plans” and “O&M Plans,” respectively). These Work Plans shall be developed in conformance with the 2004 AROD, the 2007 SOW and the EPA Superfund Remedial Design and Remedial Action guidance, the EPA Remedial Design/Remedial Action Handbook, and any additional guidance documents provided by EPA prior to approval of the Work Plans.

e. The Remedial Action Work Plans and O&M Plans shall include the documents specified in the 2007 SOW, and shall contain schedules in accordance with the time limits identified in the 2007 SOW for implementation of the Remedial Action and Operation and Maintenance.

f. Work Settling Defendants shall implement the Work detailed in the Remedial Action Work Plans upon approval or modification of the Remedial Action Work Plans by EPA pursuant to the procedures in Section XI. Upon approval by EPA, the Remedial Action Work Plans and any submissions required thereunder or this Amended Consent Decree shall be enforceable under this Amended Consent Decree. All Remedial Action activities shall be conducted in accordance with the National

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Contingency Plan, the EPA Superfund Remedial Design and Remedial Action Guidance, the EPA Remedial Design/Remedial Action Handbook, and any additional guidance provided by EPA prior to the initiation of those activities, and the requirements of this Amended Consent Decree, including the standards, specifications and schedules contained in the 2007 SOW and the Remedial Action Work Plans. Work Settling Defendants shall implement the Work detailed in the O&M Plans upon approval or modification of the O&M Plans by EPA pursuant to the procedures in Section XI. Upon approval by EPA, the O&M Plans and any submissions required thereunder or under this Amended Consent Decree shall be enforceable under this Amended Consent Decree. All Operation and Maintenance activities shall be conducted in accordance with the National Contingency Plan, the EPA Superfund Remedial Design and Remedial Action Guidance, the EPA Remedial Design/Remedial Action Handbook, any additional guidance provided by EPA, and the requirements of this Amended Consent Decree, including the standards, specifications and schedules contained in the 2007 SOW and the O&M Plans.

g. Upon entry of this Amended Consent Decree, all obligations concerning Remedial Design are subject to enforcement pursuant to this Amended Consent Decree, including but not limited to stipulated penalties, retroactive to the date of the lodging of this Amended Consent Decree.

14. The Work performed by the Work Settling Defendants pursuant to this Amended Consent Decree shall include the obligation to achieve the Performance Standards.

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15. Modification of the 2007 SOW or Related Work Plans

a. If EPA determines that modification to the work specified in the 2007 SOW and/or in work plans developed pursuant to the 2007 SOW is appropriate to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the 2004 AROD or subsequent remedy selection document(s) reflecting significant (but not fundamental) changes(s) to the selected remedy, EPA may require that such modification be incorporated in the 2007 SOW and/or such work plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the 2004 AROD or subsequent remedy selection document(s) reflecting significant (but not fundamental) change(s) to the selected remedy.

b. For purposes of Paragraphs 15, 53, and 54 only, the “scope of the remedy selected in the 2004 AROD” is composed of: the effort to prevent direct contact with and ingestion of contaminated solid waste materials present in the landfill; the effort to eliminate or minimize the potential human exposure to, and environmental impact from, contaminated sediments; and three primary efforts to address the objectives of stopping the migration of contaminants towards the Bellamy Reservoir and Cocheco River and restoring all groundwater at the Site to cleanup levels: (1) Contaminants in or in close proximity to the landfill that contribute to groundwater contamination are to be excavated and removed or intercepted and treated (the contingent remedy being capping the landfill with a RCRA C cap and intercepting contaminated groundwater at the landfill boundary); (2) Contaminants in groundwater migrating towards the Bellamy Reservoir will be intercepted and removed or treated to the extent necessary to achieve Performance

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Standards; and (3) Contaminants in groundwater migrating towards the Cocheco River will be treated through natural processes in the aquifer to Performance Standards within a reasonable time (the contingent remedy being a pump-and-treat remedy).

c. If Work Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 73 (record review). The 2007 SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Work Settling Defendants shall implement any work required by any modifications incorporated in the 2007 SOW and/or in work plans developed pursuant to the 2007 SOW in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Amended Consent Decree.

16. Settling Defendants acknowledge and agree that nothing in this Amended Consent Decree, the 2007 SOW, Remedial Design Work Plans, Remedial Action Work Plans, or the O&M Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the Work requirements set forth in the 2007 SOW and the Work Plans will achieve the Performance Standards. Work Settling Defendants' compliance with the Work requirements shall not foreclose Plaintiffs from seeking compliance with all terms and conditions of this Amended Consent Decree, including, but not limited to, the applicable Performance Standards.

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17. Work Settling Defendants shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Work Settling Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Work Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Work Settling Defendants following the award of the contract for Remedial Action construction. The Work Settling Defendants shall provide the information required by Paragraph 17(a) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. REMEDY REVIEW

18. Periodic Review. Work Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least



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every five (5) years as required by Section 121(c) of CERCLA and any applicable regulations.

19. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

20. Opportunity to Comment. Work Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the public comment period.

21. Work Settling Defendants' Obligations to Perform Further Response Actions. If EPA selects further response actions for the Site, the Work Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 89 or Paragraph 90 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Work Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 89 or Paragraph 90 of Section XXI (Covenants Not to Sue By Plaintiffs) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 73 (record review).

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22. Submission of Plans. If Work Settling Defendants are required to perform the further response actions pursuant to Paragraph 21, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Work Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Amended Decree.

VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

23. Work Settling Defendants shall use quality assurance, quality control, and chain of custody procedures throughout the performance of the Work in accordance with “EPA Requirements for Quality Assurance Project Plans (QA/R5)” (EPA/240/B-01/003, March 2001, reissued May 31, 2006), “Guidance for Quality Assurance Project Plans (QA/G-5)” (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines and guidances upon notification by EPA to Work Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Amended Consent Decree, Work Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan (“QAPP”) that is consistent with the 2007 SOW, the NCP and applicable guidance documents listed above. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Amended Consent Decree. Work Settling Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Work Settling Defendants in implementing this Amended

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Consent Decree. In addition, Work Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Work Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Amended Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" (currently ILM05.3/ILM05.4), the "Contract Lab Program Statement of Work for Organic Analysis" (currently OLM04.3), and any amendments made thereto during the course of the implementation of this Amended Consent Decree; however, upon approval by EPA, after opportunity for review and comment by the State, the Work Settling Defendants may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Work Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Amended Consent Decree participate in an EPA or EPA equivalent QA/QC program. Work Settling Defendants shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 31, 2006), or equivalent documentation as determined by EPA and identified in advance of the QAPP preparation. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements. Work Settling Defendants

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shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Amended Consent Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

24. Upon request of EPA or the State, the Work Settling Defendants shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Work Settling Defendants shall notify EPA and the State not less than twenty-eight (28) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall allow the Work Settling Defendants to take split or duplicate samples of any samples EPA or the State takes as part of the Plaintiffs' oversight of the Work Settling Defendants' implementation of the Work.

25. Work Settling Defendants shall submit to EPA and the State three (3) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Work Settling Defendants with respect to the Site and/or the implementation of this Amended Consent Decree unless EPA agrees otherwise.

26. Notwithstanding any provision of this Amended Consent Decree, the United States and the State hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

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IX. ACCESS AND INSTITUTIONAL CONTROLS

27. If the Site, or any other property where access and/or institutional controls are needed to implement this Amended Consent Decree, is owned or controlled by any of the Work Settling Defendants, such Work Settling Defendants shall:

a. commencing on the date of lodging of this Amended Consent Decree, provide the United States, the State, and their representatives, including, but not limited to, EPA and its contractors, with access at all reasonable times to the Site, and any other property, for the purpose of conducting any activity related to this Amended Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 93 of this Amended Consent Decree;

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(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);

(9) Assessing Settling Defendants' compliance with this Amended Consent Decree;

(10) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Amended Consent Decree; and

(11) Performing the Work.

b. commencing on the date of lodging of this Amended Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Amended Consent Decree. Such restrictions include, but are not limited to:

(1) the prevention of the use of the groundwater at the Site;

(2) a Groundwater Management Zone ("GMZ"), as defined by the State of New Hampshire (Env-Or 602.13), to prevent the installation of new groundwater supply wells by placing restrictions or notifications on the deeds of properties located within the contaminated groundwater plume areas originating from the Site until groundwater has been remediated to meet Interim Groundwater Cleanup Levels outlined in the 2004 AROD; and

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(3) the unauthorized modifications of the surface or subsurface at or surrounding the Site that alters either the physical or chemical character of groundwater or surface water.

c. if EPA requests pursuant to Section 4.7 of the 2007 SOW, execute and record in the Registry of Deeds of Strafford County, State of New Hampshire, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Amended Consent Decree including, but not limited to, those activities listed in Paragraph 27(a) of this Amended Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 27(b) of this Amended Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Amended Consent Decree. Such Work Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the other Work Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Such Work Settling Defendants shall, if EPA so requests, submit to EPA for review and approval with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix G, that is enforceable under the laws of the State of New Hampshire, and

(2) a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those

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liens or encumbrances are approved by EPA or when, despite best efforts, Work Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence, such Work Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Registry of Deeds of Strafford County. Within thirty (30) days of recording the easement, such Work Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

28. If the Site, or any other property where access and/or institutional controls are needed to implement this Amended Consent Decree, is owned or controlled by persons other than any of the Work Settling Defendants, Work Settling Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Work Settling Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Amended Consent Decree including, but not limited to, those activities listed in Paragraph 27(a) of this Amended Consent Decree;



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b. an agreement, enforceable by the Work Settling Defendants and the United States, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Amended Consent Decree. Such restrictions include, but are not limited to those listed in Paragraph 27(b); and

c. if EPA requests pursuant to Section 4.7 of the 2007 SOW, the execution and recordation in the Registry of Deeds of Strafford County, State of New Hampshire, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Amended Consent Decree including, but not limited to, those activities listed in Paragraph 27(a) of this Amended Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 27(b) of this Amended Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Amended Consent Decree. The access rights and/or rights to enforce institutional controls shall be granted to (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Work Settling Defendants and their representatives, and/or (iv) other appropriate grantees. If EPA so requests, Work Settling Defendants shall submit to EPA for review and approval with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix G, that is enforceable under the laws of the State of New Hampshire, and

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(2) a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence, Work Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, the easement shall be recorded with the Registry of Deeds of Strafford County. Within thirty (30) days of the recording of the easement, Work Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

29. For purposes of Paragraphs 27 and 28 of this Amended Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, institutional controls, land/water use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If (a) any access or land/water use restriction agreements required by Paragraphs 28(a) or 28(b) of this Amended Consent Decree are not obtained within forty-five (45) days of the

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date of entry of this Amended Consent Decree, (b) any access easements or restrictive easements required by Paragraph 28(c) of this Amended Consent Decree are not submitted to EPA in draft form within forty-five (45) days of the date of entry of this Amended Consent Decree, or (c) Work Settling Defendants are unable to obtain an agreement pursuant to Paragraph 27(c)(1) or Paragraph 28(c)(1) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this Amended Consent Decree within forty-five (45) days of the date of entry of this Amended Consent Decree, Work Settling Defendants shall promptly notify the United States, EPA, and the State in writing, and shall include in that notification a summary of the steps that Work Settling Defendants have taken to attempt to comply with Paragraph 27 or 28 of this Amended Consent Decree. The United States or the State may, as they deem appropriate, assist Work Settling Defendants in obtaining access or institutional controls, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Work Settling Defendants shall reimburse the United States and the State in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States and the State in obtaining such access, institutional controls, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

30. If EPA determines that institutional controls in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the

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remedy selected in the 2004 AROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Work Settling Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls.

31. Notwithstanding any provision of this Amended Consent Decree, the United States and the State retain all of its access authorities and rights, as well as all of their rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

32. In addition to any other requirement of this Amended Consent Decree, Work Settling Defendants shall submit to the United States, EPA, and the State three (3) copies of written quarterly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Amended Consent Decree during the previous quarter; (b) include a summary of all results of sampling and tests and all other data received or generated by Work Settling Defendants or their contractors or agents in the previous quarter; (c) identify all work plans, plans and other deliverables required by this Amended Consent Decree that were completed and submitted during the previous quarter; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next four months and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work

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plans or other schedules that Work Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous quarter and those to be undertaken in the next four months. Work Settling Defendants shall submit these progress reports to the United States, EPA, and the State by the tenth day of every quarter following the lodging of this Amended Consent Decree until EPA notifies the Work Settling Defendants pursuant to Paragraph 54(b) of Section XIV (Certification of Completion). If requested by EPA or the State, Work Settling Defendants shall also provide briefings for EPA and the State to discuss the progress of the Work.

33. The Work Settling Defendants shall notify the United States, EPA, and the State of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven (7) days prior to the performance of the activity.

34. Upon the occurrence of any event during performance of the Work that Work Settling Defendants are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, and/or Section 304 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11004, Work Settling Defendants shall immediately upon discovery of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator designated pursuant to Section XII (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator nor Alternate EPA Project Coordinator is available, the Emergency Planning & Response Branch, Region 1 – New England Region, United States

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Environmental Protection Agency, and the State Project Coordinator. These reporting requirements are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

35. Within twenty (20) days of discovery of the onset of such an event, as described in the preceding Paragraph, Work Settling Defendants shall furnish to Plaintiffs a written report, signed by the Work Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Work Settling Defendants shall submit a report setting forth all actions taken in response thereto.

36. Work Settling Defendants shall submit four (4) copies of all plans, reports, and data required by the 2007 SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans, unless otherwise specified by EPA. Work Settling Defendants shall simultaneously submit three (3) copies of all such plans, reports and data to the State.

37. All reports and other documents submitted by Work Settling Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Work Settling Defendants' compliance with the terms of this Amended Consent Decree shall be signed by an authorized representative of the Work Settling Defendants.

XI. SUBMISSIONS REQUIRING AGENCY APPROVAL

38. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Amended Consent Decree, EPA, after reasonable

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opportunity for review and comment by the State, shall in writing: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Work Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Work Settling Defendants at least one notice of deficiency and an opportunity to cure within thirty (30) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

39. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 38(a), (b), or (c), Work Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 38(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX.

40. a. Upon receipt of a written notice of disapproval pursuant to Paragraph 38(d), Work Settling Defendants shall, within thirty (30) days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 30-day period or otherwise specified

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period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 41 and 42.

b. Notwithstanding the receipt of a written notice of disapproval pursuant to Paragraph 38(d) or (e), Work Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Work Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

41. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Work Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to amend or develop the plan, report, or other item. Work Settling Defendants shall implement any such plan, report, or item as amended or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

42. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Work Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Work Settling Defendants invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties



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shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

43. All plans, reports, and other items required to be submitted to EPA under this Amended Consent Decree shall, upon approval or modification by EPA, be enforceable under this Amended Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Amended Consent Decree, the approved or modified portion shall be enforceable under this Amended Consent Decree.

XII. PROJECT COORDINATORS

44. Within twenty (20) days of lodging this Amended Consent Decree, Work Settling Defendants, the State, and EPA will notify each other, in writing, of the name, address, and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Work Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Work Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

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45. Plaintiffs may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Amended Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the National Contingency Plan. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt, conduct, or direct any Work required by this Amended Consent Decree, and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

46. EPA's Project Coordinator and the Work Settling Defendants' Project Coordinator will meet, at a minimum, on a quarterly basis, unless EPA determines that such a quarterly meeting is not necessary.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

47. Within thirty (30) days of entry of this Amended Consent Decree, Work Settling Defendants shall establish and maintain financial security in the amount of \$20,700,000 (hereinafter "Estimated Cost of the Work") in one or a combination of the following forms:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as

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acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

d. A policy of insurance that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;

e. A demonstration that one or more Work Settling Defendants, individually or collectively meets the financial test criteria of 40 C.F.R. § 264.143(f), provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied;

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of a Work Settling Defendant, or (ii) a company that has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with at least one Work Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. §

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264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder; or

g. For those Work Settling Defendants that are municipalities, annually a duly executed resolution by the municipal legislative body for a sum certain equal to funds expected to be expended in the current fiscal year.

48. Work Settling Defendants have selected, and EPA has approved, as an initial financial security a surety bond, an irrevocable letter of credit, a parent company written guarantee, and a duly executed resolution by a municipal legislative body pursuant to the preceding Paragraph. Within thirty (30) days after entry of this Amended Consent Decree, Work Settling Defendants shall execute or otherwise finalize all instruments or other documents required in order to make the selected financial security legally binding, and such financial security shall thereupon be fully effective. Within thirty (30) days of entry of this Amended Consent Decree, Work Settling Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial security legally binding to the EPA Regional Financial Management Officer in accordance with Section XXVI (Notices and Submissions) of this Amended Consent Decree, with a copy to the United States, EPA, and the State as specified in Section XXVI.

49. If at any time during the effective period of this Amended Consent Decree, the Work Settling Defendant(s) provide a financial security for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 47(e) or Paragraph 47(f) above, such Work Settling Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. §

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264.151(h)(1) relating to these methods unless otherwise provided in this Amended Consent Decree, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of each such entity's fiscal year; and (iii) the notification of EPA within ninety days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. §

264.143(f)(1). For purposes of the financial security methods specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Amended Consent Decree, and the terms "current closure cost estimate" "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work. If Work Settling Defendants seek to demonstrate their ability to complete the Work, or portion of it, by means of municipal authorization pursuant to Paragraph 47(g), the authorizing municipality shall submit to EPA each year annual budgets and annual financial reports; in addition, the municipality shall submit the current bond rating and bond rating package for the most recent bond issuance and for each bond issuance during the performance of the Work.

50. In the event that EPA determines at any time that a financial security provided by any Work Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Work Settling Defendant becomes aware of information indicating that a

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financial security provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Work Settling Defendant(s), within thirty (30) days of receipt of notice of EPA's determination or, as the case may be, within thirty days of any Work Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval, after opportunity for review and comment by the State, a proposal for a revised or alternative form of financial security listed in Paragraph 47 of this Amended Consent Decree that satisfies all requirements set forth in this Section XIII. In seeking approval for a revised or alternative form of financial security, Work Settling Defendants shall follow the procedures set forth in Paragraph 52(b)(2) of this Amended Consent Decree. Work Settling Defendants' inability to post financial security for completion of the Work shall in no way excuse performance of any other requirements of this Amended Consent Decree, including, without limitation, the obligation of Work Settling Defendant(s) to complete the Work in strict accordance with the terms hereof.

51. The commencement of any Work Takeover pursuant to Paragraph 93 of this Amended Consent Decree shall trigger EPA's right to receive the benefit of any financial security provided pursuant to Paragraph 47(a), (b), (c), (d), (e), (f), or (g) and at such time EPA shall have immediate access to resources guaranteed under any such financial security, whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such financial security, whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the

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Work Takeover, Work Settling Defendants shall immediately upon written demand from EPA deposit into the Dover Municipal Landfill Superfund Site Work Takeover Special Account within the EPA Hazardous Substance Superfund (to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund), in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA. In the event that EPA's implementation of a Work Takeover is later determined through dispute resolution to require termination, or in the event that EPA otherwise ceases the implementation of a Work Takeover, EPA shall return to the pertinent party or parties any unused funds deposited pursuant to the preceding sentence.

52. Modification of Amount and/or Form of Financial Security.

a. Reduction of Amount of Financial Security. After the earlier of (i) the Certification of Completion of the Remedial Action pursuant to Paragraph 53 or (ii) a decision by EPA to require implementation of the source control contingent remedy pursuant to Sections 6.5 and 9.1 of the 2007 SOW, if Work Settling Defendants believe that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 47 above, Work Settling Defendants may, on any anniversary date of entry of this Amended Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the financial security provided pursuant to this Section so that the amount of the financial security is equal to the estimated cost of the remaining Work to be performed. Work Settling Defendants shall submit a written proposal for such reduction to EPA that shall specify, at a

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minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of financial security, Work Settling Defendants shall follow the procedures set forth in Paragraph 52(b)(2) of this Amended Consent Decree. If EPA decides to accept such a proposal, EPA shall notify the petitioning Work Settling Defendants of such decision in writing. After receiving EPA's written acceptance, Work Settling Defendants may reduce the amount of the financial security in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Work Settling Defendants may reduce the amount of the financial security required hereunder only in accordance with a final administrative or judicial decision resolving such dispute. No change to the form or terms of any financial security provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 47 or 52(b) of this Amended Consent Decree.

b. Change of Form of Financial Security.

(1) If, after entry of this Amended Consent Decree, Work Settling Defendants desire to change the form or terms of any financial security provided pursuant to this Section, Work Settling Defendants may, on any anniversary date of entry of this Amended Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the financial security provided hereunder. The submission of such proposed revised or alternative form of financial security shall be as provided in Paragraph 52(b)(2) of this Amended Consent Decree. Any decision made by EPA on a petition submitted under this subparagraph (b)(1) shall be made in EPA's sole and unreviewable discretion, and such decision shall not be



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subject to challenge by Work Settling Defendants pursuant to the dispute resolution provisions of this Amended Consent Decree or in any other forum.

(2) Work Settling Defendants shall submit a written proposal for a revised or alternative form of financial security to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of financial security, including all proposed instruments or other documents required in order to make the proposed financial security legally binding. The proposed revised or alternative form of financial security must satisfy all requirements set forth or incorporated by reference in this Section. Work Settling Defendants shall submit such proposed revised or alternative form of financial security to the EPA Regional Financial Management Officer in accordance with Section XXVI (Notices and Submissions) of this Amended Consent Decree, with a copy to United States, EPA, and the State as specified in Section XXVI. EPA shall notify Work Settling Defendants in writing of its decision to accept or reject a revised or alternative financial security submitted pursuant to this subparagraph. Within ten (10) days after receiving a written decision approving the proposed revised or alternative financial security, Work Settling Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial security legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such financial security shall thereupon be fully effective. Work Settling Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial security legally binding to the EPA Regional Financial Management Officer within thirty

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(30) days of receiving a written decision approving the proposed revised or alternative financial security in accordance with Section XXVI (Notices and Submissions) of this Amended Consent Decree with a copy to the United States, EPA, and the State as specified in Section XXVI.

c. Release of Financial Security. If Work Settling Defendants receive written notice from EPA in accordance with Paragraph 54 hereof that the Work has been fully and finally completed in accordance with the terms of this Amended Consent Decree, or if EPA otherwise so notifies Work Settling Defendants in writing, Work Settling Defendants may thereafter release, cancel, or discontinue the financial security provided pursuant to this Section. Work Settling Defendants shall not release, cancel, or discontinue any financial security provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, Work Settling Defendants may release, cancel, or discontinue the financial security required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XIV. CERTIFICATION OF COMPLETION

53. Completion of the Remedial Action

a. Within ninety (90) days after Work Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Work Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Work Settling Defendants, EPA, and the State. If, after the pre-certification inspection, the Work Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to

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the State, pursuant to Section XI (Submissions Requiring Agency Approval) within thirty (30) days of the inspection. In the report, a registered professional engineer and the Work Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Amended Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Work Settling Defendant or the Work Settling Defendants' Project Coordinator:

“To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Amended Consent Decree or that the Performance Standards have not been achieved, EPA will notify Work Settling Defendants in writing of the activities that must be undertaken by the Work Settling Defendants pursuant to this Amended Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Work Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the “scope of the remedy selected in the 2004 AROD,” as that term is defined in Paragraph 15(b). EPA will set forth in the notice a schedule for performance of such activities consistent with the Amended Consent Decree and the 2007 SOW or

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require the Work Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (Submissions Requiring Agency Approval). Work Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Remedial Action and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been fully performed in accordance with this Amended Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Work Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Amended Consent Decree. Certification of Completion of the Remedial Action shall not affect Work Settling Defendants' obligations under this Amended Consent Decree unless otherwise specified in this Amended Consent Decree.

54. Completion of the Work

a. Within ninety (90) days after Work Settling Defendants conclude that all phases of the Work (including O&M), have been fully performed, Work Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Work Settling Defendants, EPA, and the State. If, after the pre-certification inspection, the Work Settling Defendants still believe that the Work has been fully performed, Work Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this

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Amended Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Work Settling Defendant or the Work Settling Defendants' Project Coordinator:

"To the best of my knowledge, after through investigation, I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Amended Consent Decree, EPA will notify Work Settling Defendants in writing of the activities that must be undertaken to complete the Work, provided, however, that EPA may only require Work Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the 2004 AROD," as that term is defined in Paragraph 15(b). EPA will set forth in the notice a schedule for performance of such activities consistent with the Amended Consent Decree and the 2007 SOW or require the Work Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (Submissions Requiring Agency Approval). Work Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion of the Work by the Work Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been

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fully performed in accordance with this Amended Consent Decree, EPA will so notify the Work Settling Defendants in writing.

XV. EMERGENCY RESPONSE

55. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Work Settling Defendants shall, subject to Paragraph 56, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Work Settling Defendants shall immediately notify the EPA Emergency Planning & Response Branch, Region 1 – New England Region. Work Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the other Project Operations Plans, and any other applicable plans or documents developed pursuant to the 2007 SOW and approved by EPA. In the event that Work Settling Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the State takes such action instead, Work Settling Defendants shall reimburse EPA and the State all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Reimbursement of Response Costs).

56. Nothing in the preceding Paragraph or in this Amended Consent Decree shall be deemed to limit any authority of the United States, or the State, to take, direct, or

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order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XVI. REIMBURSEMENT OF RESPONSE COSTS

57. Within thirty (30) days of the effective date of this Amended Consent Decree, Work Settling Defendants shall pay to the United States \$21,584.13 in reimbursement of Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with EFT instructions provided to the Work Settling Defendants by the Financial Litigation Unit of the U.S. Attorney’s Office in the District of New Hampshire. These instructions shall be provided following lodging of the Amended Consent Decree. Any payments received by the U.S. Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. At the time of payment required to be made under this Section, the Work Settling Defendants shall also send written notice of the EFT to the United States, to EPA, and to the EPA Cincinnati Financial Management Officer, as specified in Section XXVI (Notices and Submissions). Such notice shall reference EPA Region 1 – New England Region, Site/Spill Identification Number 0123, DOJ case number 90-11-2-735, USAO File No. 2007V00142, and Civil Action No. 1:92-CV-406-M. The total amount to be paid by the Work Settling Defendants pursuant to this subparagraph shall be deposited in the Dover Municipal Landfill Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

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58. Work Settling Defendants shall reimburse the United States and the State for all Future Response Costs, except the first \$100,000 in Future Response Costs incurred by the United States, and except an additional \$25,000 in Future Response Costs incurred by the United States if the Eastern Plume Management of Migration Contingent Remedy is performed by the Work Settling Defendants as required by EPA pursuant to Section 9.2 of the 2007 SOW, not inconsistent with the National Contingency Plan incurred by the United States and the State.

a. On a periodic basis, the United States will send Work Settling Defendants a bill requiring payment that consists of a Region 1 standard cost summary, which is a line-item summary of costs in dollars by category of costs (including but not limited to payroll, travel, indirect costs, and contracts) incurred by EPA, DOJ, and their contractors. Work Settling Defendants shall make all payments within thirty (30) days of Work Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 59. The Work Settling Defendants shall make all payments required by this subparagraph in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," and referencing EPA Region 1 – New England Region, Dover Municipal Landfill Superfund Site, Site/Spill Identification No. 0123, DOJ Case Number 90-11-2-735, USAO File No. 2007V00142, and Civil Action No. 1:92-CV-406-M. The Work Settling Defendants shall forward the certified check(s) to

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000



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and shall send copies of the check and transmittal letter to the United States, to EPA and to the EPA Cincinnati Financial Management Officer in accordance with Section XXVI (Notices and Submissions). The total amount to be paid by Work Settling Defendants pursuant to this subparagraph shall be deposited in the Dover Municipal Landfill Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

b. On a periodic basis, the State will send Work Settling Defendants a bill requiring payment that consists of a standard State cost summary, which is a line-item summary of costs in dollars by category of costs (including but not limited to payroll, travel, indirect costs, and contracts) incurred by the State and its contractors. With respect to costs of contractors, the summary shall break down costs by task. Work Settling Defendants shall make all payments within thirty (30) days of Work Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 59. The Work Settling Defendants shall make all payments required by this subparagraph to the State Hazardous Waste Cleanup Fund in the form of a certified check or checks made payable to "Treasurer, State of New Hampshire" and referencing the Dover Municipal Landfill Superfund Site. The Work Settling Defendants shall forward the certified check(s) to

Peter C.L. Roth  
Senior Assistant Attorney General  
State of New Hampshire  
Office of the Attorney General  
33 Capitol Street  
Concord, NH 03301.

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59. Work Settling Defendants may contest payment of any Future Response Costs under the preceding Paragraph if they determine that the United States or the State has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP, provided such objection is made in writing within thirty (30) days of receipt of the bill and is sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Work Settling Defendants shall within the 30-day period pay all uncontested Future Response Costs to the United States or the State in the manner described in the preceding Paragraph. Simultaneously, within thirty (30) days of receipt of the bill, the Work Settling Defendants shall establish an interest bearing escrow account in a federally-insured bank duly chartered in the State of New Hampshire and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Work Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), and the State a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Work Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX. If the United States or the State prevails in the dispute, within five (5) days of the

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resolution of the dispute, the Work Settling Defendants shall pay the sums due (with accrued interest) to the United States or the State, if State costs are disputed, in the manner described in the preceding Paragraph. If the Work Settling Defendants prevail concerning any portion of the contested costs, the Work Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States or the State, if State costs are disputed, in the manner described in the preceding Paragraph; Work Settling Defendants shall be disbursed any balance of the escrow account. Unless a determination is made under this Paragraph in conjunction with the Dispute Resolution procedures of Section XIX that the Work Settling Defendants are not obligated to pay contested portions of the bill, the time for payment of the contested portions of the bill shall remain the original payment due date and interest shall accrue on any unpaid portions of the bill from the original payment due date. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Work Settling Defendants' obligation to reimburse the United States and the State for their Future Response Costs.

60. In the event that the payments required by Paragraph 57 are not made within thirty (30) days of the effective date of this Amended Consent Decree or the payments required by Paragraph 58 are not made within thirty (30) days of the Work Settling Defendants' receipt of the bill, Work Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs shall begin to accrue on the effective date of the Amended Consent Decree. The Interest on Future Response Costs shall begin to accrue on the date of the Work Settling Defendants' receipt of the

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bill. Interest shall accrue through the date of the Work Settling Defendant's payment. The Work Settling Defendants shall pay a one-percent handling charge and a six percent penalty charge, if the Work Settling Defendants have not paid to the United States and the State the full amount required by Paragraph 57 within ninety (90) days of the effective date of the Amended Consent Decree. The Work Settling Defendants shall pay a one-percent handling charge and a six percent penalty charge, if the Work Settling Defendants have not paid the full amount required by Paragraph 58 within ninety (90) days of Work Settling Defendants' receipt of the bill. Payments made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Work Settling Defendants' failure to make timely payments under this Section. Handling charge payments and penalty charge payments shall be made out to: Treasurer, United States of America, and sent to:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000  
RE: Dover Superfund Site RD/RA Second Consent Decree

XVII. INDEMNIFICATION AND INSURANCE

61. a. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of the Work Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Work Settling Defendants shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on

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account of, negligent or other wrongful acts or omissions of Work Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Amended Consent Decree, including, but not limited to, any claims arising from any designation of Work Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Work Settling Defendants agree to pay the United States and the State all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Work Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Amended Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of the Work Settling Defendants in carrying out activities pursuant to this Amended Consent Decree. Neither the Work Settling Defendants nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give the Work Settling Defendants notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 61, and shall consult with the Work Settling Defendants prior to settling such claim.

62. Work Settling Defendants waive all claims against the United States and the State and their officials, agents, employees, contractors, subcontractors, and representatives for damages or reimbursement or for set-off of any payments made or to

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be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of the Work Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Work Settling Defendants shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Work Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

63. No later than fifteen (15) days before commencing any on-site Work, Work Settling Defendants shall secure, and shall maintain for the duration of this Amended Consent Decree comprehensive general liability insurance with limits of \$5 million dollars, combined single limit, and automobile insurance with limits of \$2 million, combined single limit, naming as additional insured the United States and the State. In addition, for the duration of this Amended Consent Decree, Work Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Work Settling Defendants in furtherance of this Amended Consent Decree. No later than fifteen (15) days before commencing any on-Site Work, Work Settling Defendants shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. Work Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Amended Consent Decree. If Work Settling

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Defendants demonstrate by evidence satisfactory to EPA, in consultation with the State, that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Work Settling Defendants need provide only that insurance portion which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

64. “Force majeure,” for purposes of this Amended Consent Decree, is defined as any event arising from causes beyond the control of the Work Settling Defendants or of any entity controlled by Work Settling Defendants, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Amended Consent Decree despite Work Settling Defendants’ best efforts to fulfill the obligation. The requirement that the Work Settling Defendants exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work or a failure to attain the Performance Standards.

65. If any event occurs or has occurred that may delay the performance of any obligation under this Amended Consent Decree, whether or not caused by a force majeure event, the Work Settling Defendants shall notify orally EPA’s Project Coordinator or, in his or her absence, EPA’s Alternate Project Coordinator or, in the event both of EPA’s designated representatives are unavailable, the Director, Office of

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Site Remediation and Restoration, EPA Region 1 – New England Region, within 48 hours or one working day, whichever is longer, of when Work Settling Defendants first knew that the event might cause a delay. Within five (5) days thereafter, Work Settling Defendants shall provide in writing to EPA and the State: an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Work Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Work Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare, or the environment. The Work Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Work Settling Defendants from asserting any claim of force majeure for that event. Work Settling Defendants shall be deemed to have notice of any circumstance of which Work Settling Defendants or any entity controlled by Work Settling Defendants, including, but not limited to, their contractors or subcontractors, had or should have had notice.

66. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time(s) for performance of the obligations under this Amended Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the



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obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Work Settling Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a force majeure event, EPA will notify the Work Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

67. If the Work Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Work Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Work Settling Defendants complied with the requirements of Paragraphs 64 and 65, above. If Work Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Work Settling Defendants of the affected obligation of this Amended Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

68. Unless otherwise expressly provided for in this Amended Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between EPA and Work Settling Defendants or between the State and

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Work Settling Defendants arising under or with respect to this Amended Consent Decree or the 2007 SOW. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Work Settling Defendants that have not been disputed in accordance with this Section.

69. Any dispute which arises under or with respect to this Amended Consent Decree or the 2007 SOW shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

70. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ten (10) working days after the conclusion of the informal negotiation period, Work Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Work Settling Defendants. The Statement of Position shall specify the Work Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 73 or 74.

71. Within fourteen (14) days after receipt of Work Settling Defendants' Statement of Position, EPA will serve on Work Settling Defendants, with a copy to the State, its Statement of Position, including, but not limited to, any factual data, analysis, or

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opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 73 or 74. The State may, if it so chooses, submit to EPA and the Work Settling Defendants a Statement of Position within ten (10) days after receipt of Work Settling Defendants' Statement of Position.

72. If there is disagreement between EPA and the Work Settling Defendants as to whether dispute resolution should proceed under Paragraph 73 or 74, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Work Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 73 and 74.

73. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Amended Consent Decree or the 2007 SOW; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree or the 2007 SOW. Nothing in this Amended Consent Decree shall be construed to allow any dispute by Work Settling Defendants regarding the validity of the 2004 AROD's provisions.

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a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Paragraph. Upon reasonable and timely request, EPA shall allow submission of a supplemental statement of position by each party to the dispute.

b. The Director, Office of Site Remediation and Restoration, EPA Region 1 – New England Region, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 73(a). This decision shall be binding upon the Work Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 73(c) and (d).

c. Any administrative decision made by EPA pursuant to Paragraph 73(b) shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Work Settling Defendants with the Court and served on all Parties within twenty (20) days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Amended Consent Decree. The United States may file a response to Work Settling Defendants' notice of judicial appeal.

d. In proceedings on any dispute governed by this Paragraph, Work Settling Defendants shall have the burden of demonstrating that the decision of the Director of the Office of Site Remediation and Restoration is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 73(a).

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74. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Work Settling Defendants' Statement of Position submitted pursuant to Paragraph 70, the Director, Office of Site Remediation and Restoration, EPA Region 1 – New England Region, will issue a final decision resolving the dispute. The Director's decision shall be binding on the Settling Defendants unless, within twenty (20) days of receipt of the decision, the Work Settling Defendants file with the Court and serve on the parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Amended Consent Decree. The United States may file a response to Work Settling Defendants' notice of judicial appeal.

b. Notwithstanding Paragraph EE of Section I (Background) of this Amended Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

75. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Work Settling Defendants under this Amended Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 85. Notwithstanding the stay of payment, stipulated penalties shall

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accrue from the first day of noncompliance with any applicable provision of this Amended Consent Decree. In the event that the Work Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

76. Disputes solely between the State and the Work Settling Defendants.

Disputes arising under this Amended Consent Decree or the 2007 SOW between the State and the Work Settling Defendants that relate to Future Response Costs owed to the State, or assessment of stipulated penalties by the State, shall be governed in the following manner. The procedures for resolving the disputes mention in this Paragraph shall be same as provided for in Paragraphs 68 to 75, except that each reference to EPA shall read as a reference to NHDES, each reference to Director, Office of Site Remediation and Restoration, EPA Region 1 – New England Region, shall be read as a reference to the Director of the Waste Management Division, NHDES, and each reference to the United States shall be read as a reference to the State.

XX. STIPULATED PENALTIES

77. Work Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 78 and 79 to the United States and the State for failure to comply with the requirements of this Amended Consent Decree specified below, unless excused under Section XVIII (Force Majeure). “Compliance” by Work Settling Defendants shall include completion of the activities under this Amended Consent Decree or any work plan or other plan approved under this Amended Consent Decree identified below in accordance with all applicable requirements of law, this Amended Consent Decree, the 2007 SOW, and any plans or other documents approved by EPA

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pursuant to this Amended Consent Decree and within the specified time schedules established by and approved under this Amended Consent Decree.

78. The following stipulated penalties shall accrue per violation per day to the United States and the State for any noncompliance with the terms of this Amended Consent Decree and the 2007 SOW not identified in Paragraph 79:

<b>Penalty Per Violation Per Day</b>	<b>Period of Noncompliance</b>
\$1,000	1 <sup>st</sup> through 7 <sup>th</sup> day
\$2,000	8 <sup>th</sup> through 14 <sup>th</sup> day
\$4,000	15 <sup>th</sup> through 30 <sup>th</sup> day
\$6,000	31 <sup>st</sup> through 60 <sup>th</sup> day
\$15,000	61 <sup>st</sup> day and beyond

79. The following stipulated penalties shall accrue per violation per day to the United States and the State for failure to submit timely or adequate reports or other written documents pursuant to Sections X (Reporting Requirements), XII (Project Coordinators), XIV (Certification of Completion), XXIV (Access to Information), and XXV (Retention of Records):

<b>Penalty Per Violation Per Day</b>	<b>Period of Noncompliance</b>
\$500	1 <sup>st</sup> through 7 <sup>th</sup> day
\$1,000	8 <sup>th</sup> through 30 <sup>th</sup> day
\$3,000	31 <sup>st</sup> through 60 <sup>th</sup> day
\$7,500	61 <sup>st</sup> day and beyond

80. In the event that pursuant to Paragraph 93 of Section XXI (Covenants Not to Sue by Plaintiffs), EPA assumes performance of all of the Work or a portion of the Work, Work Settling Defendants shall be liable for a stipulated penalty in the amount of \$500,000.

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81. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (Submissions Requiring Agency Approval), during the period, if any, beginning on the 31<sup>st</sup> day after EPA's receipt of such submission until the date that EPA notifies Work Settling Defendants of any deficiency ; (2) with respect to a decision by the Director, Office of Site Remediation and Restoration, EPA Region 1 – New England Region, under Paragraph 73(b) or 74(a) of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21<sup>st</sup> day after the date that Work Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31<sup>st</sup> day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Amended Consent Decree.

82. Following EPA's determination that Work Settling Defendants have failed to comply with a requirement of this Amended Consent Decree, EPA may give the Work Settling Defendants written notification of the same and describe the noncompliance. EPA and the State may send the Work Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding



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Paragraph regardless of whether EPA or the State has notified the Work Settling Defendants of a violation.

83. All penalties accruing under this Section shall be due and payable to the United States and the State within thirty (30) days of the Work Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Work Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," and shall be mailed to:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

and shall reference Site/Spill Number 0123, DOJ Case Number 90-11-2-735, USAO File No. 2007V00142, and Civil Action No. 1:92-CV-406-M. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions).

84. The payment of penalties shall not alter in any way Work Settling Defendants' obligation to complete the performance of the Work required under this Amended Consent Decree.

85. Penalties shall continue to accrue as provided in Paragraph 81 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid

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to EPA and the State within thirty (30) days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Work Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA and the State within sixty (60) days of receipt of the Court's decision or order, except as provided in subparagraph c below;

c. If the District Court's decision is appealed by any party, Work Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States or the State into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA and the State or to Work Settling Defendants to the extent that they prevail.

86. a. If Work Settling Defendants fail to pay stipulated penalties when due, the United States or the State may institute proceedings to collect the penalties, as well as interest. Work Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 83.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Work Settling Defendants' violation of this Amended Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA, provided,

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however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

c. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

87. No payments made under this Section shall be tax deductible for Federal or State tax purposes.

XXI. COVENANTS NOT TO SUE BY PLAINTIFFS

88. a. In consideration of the Cash-Out Defendants' agreement to this Amended Consent Decree and the actions that will be performed and the payments that will be made by the Work Settling Defendants under the terms of the Amended Consent Decree, and except as specifically provided in Paragraphs 89, 90, and 92 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA for performance of the Work and for recovery of Past Response Costs and Future Response Costs. For the Work Settling Defendants, these covenants not to sue are conditioned upon the complete and satisfactory performance by Work Settling Defendants of their obligations under this Amended Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

b. In consideration of the Cash-Out Defendants' agreement to this Amended Consent Decree and the actions that will be performed and the payments that will be made by the Work Settling Defendants under the terms of the Amended Consent

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Decree, and except as specifically provided in Paragraphs 89, 90, and 92 of this Section, the State of New Hampshire covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, Section 7003 of RCRA, New Hampshire Revised Statutes Annotated 147-A:9 or 147-B:10, or New Hampshire common law of nuisance for performance of the Work and for recovery of Past Response Costs and Future Response Costs. For the Work Settling Defendants, these covenants not to sue are conditioned upon the complete and satisfactory performance by Work Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

c. In consideration of the excavation and restoration of the drainage swale at the Site, including attaining Performance Standards for arsenic, to be performed by the Work Settling Defendants and the attainment of Performance Standards for arsenic in the drainage ditch, the State of New Hampshire covenants not to sue or take administrative action against Settling Defendants for any and all civil liability for injury to, destruction of, or loss of natural resources belonging to or appertaining to the State of New Hampshire. For the Work Settling Defendants, this covenant shall take effect upon the State's determination of the attainment of the Performance Standards in the drainage swale and ditch and of the restoration of affected wetlands and floodplains. This covenant is conditioned upon the State's determination of the complete and satisfactory performance by the Work Settling Defendants of their obligations under this Amended Consent Decree. This covenant not to sue extends only to the Settling Defendants and does not extend to any other person.

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89. United States' Pre-Certification Reservations. Notwithstanding any other provision of this Amended Consent Decree, the United States reserves, and, this Amended Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response if,

prior to Certification of Completion of the Remedial Action:

- (1) conditions at the Site, previously unknown to EPA, are discovered, or
  - (2) information, previously unknown to EPA, is received, in whole or in part,
- and EPA determines, based on these previously unknown conditions or information together with any other relevant information, that the Remedial Action is not protective of human health or the environment.

90. United States' Post-Certification Reservations. Notwithstanding any other provision of this Amended Consent Decree, the United States reserves, and this Amended Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response if,

subsequent to Certification of Completion of the Remedial Action:

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(1) conditions at the Site, previously unknown to EPA, are discovered, or

(2) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines, based on these previously unknown conditions or this information together with other relevant information, that the Remedial Action is not protective of human health or the environment.

91. For purposes of Paragraph 89, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the 2004 AROD was signed and set forth in the 2004 AROD and the administrative record supporting the 2004 AROD. For purposes of Paragraph 90, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the 2004 AROD, the post-2004 AROD administrative record or any information received by EPA pursuant to the requirements of this Amended Consent Decree prior to Certification of Completion of the Remedial Action.

92. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 88. The United States and the State reserve, and this Amended Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

a. claims based on a failure by Settling Defendants to meet a requirement of this Amended Consent Decree;

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- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- c. liability based upon the Work Settling Defendants' ownership or operation of the Site, or upon the Work Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the 2004 AROD, the Work, or otherwise ordered by EPA, after signature of this Amended Consent Decree by the Work Settling Defendants;
- d. liability to the United States for damages for injury to, destruction of, or loss of natural resources;
- e. liability for response costs that have been or may be incurred by the Department of Interior and the National Oceanic and Atmospheric Administration;
- f. criminal liability;
- g. liability for violations of federal or state law which occur during or after implementation of the Remedial Action;
- h. liability for costs that the United States and the State will incur related to the Site but are not within the definition of Future Response Costs; and
- i. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 15 (Modification of the 2007 SOW or Related Work Plans).

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93. Work Takeover.

a. In the event EPA determines that Work Settling Defendants have (i) ceased implementation of any portion of the Work, or (ii) are seriously or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to the Work Settling Defendants. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Work Settling Defendants a period of ten (10) days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the 10-day notice period specified in the preceding subparagraph, Work Settling Defendants have not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA deems necessary (“Work Takeover”). EPA shall notify Work Settling Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this subparagraph.

c. Work Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute EPA’s implementation of a Work Takeover under the preceding subparagraph. However, notwithstanding Work Settling Defendants’ invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under the preceding subparagraph until the earlier of (i) the date that Work Settling Defendants



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remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XIX (Dispute Resolution), Paragraph 73, requiring EPA to terminate such Work Takeover.

d. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XIII of this Amended Consent Decree, in accordance with the provisions of Paragraph 51 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and the Work Settling Defendants fail to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 51, any unreimbursed costs incurred by the EPA in performing the Work under the Work Takeover shall be considered Future Response Costs that Work Settling Defendants shall pay pursuant to Section XVI (Reimbursement of Response Costs).

94. Notwithstanding any other provision of this Amended Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANTS

95. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to the Site or this Consent Decree, including, but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b) (2), 111,

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112, 113 or otherwise any other provision of law; any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site; any claims arising out of response activities at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or any claims against the State, or any department or agency, or instrumentality thereof, including but not limited to any direct or indirect claim for reimbursement from the Oil Discharge and Disposal Fund established under NH RSA 146-D, the Fuel Oil Discharge Cleanup Fund established under NH RSA 146-E, the Motor Oil Discharge Cleanup Fund established under NH RSA 146-F, or the Gasoline Remediation and Elimination of Ethers Fund established under NH RSA 146-G, or any other provision of law. These covenants not to sue shall not apply in the event that the United States or the State brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 89, 90, 92 (b) - (e) or 92 (h) - (i), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

96. The Work Settling Defendants reserve, and this Amended Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would

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be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Work Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

97. Nothing in this Amended Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

98. Except as provided in Paragraph 103, nothing in this Amended Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Amended Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Amended Consent Decree may have under applicable law. Except as provided in Paragraph 103, each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

99. With regard to claims for contribution against Settling Defendants for matters addressed in this Amended Consent Decree, the Parties hereto agree, and by

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entering this Amended Consent Decree the Court finds, that the Settling Defendants are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2). The “matters addressed” in this Amended Consent Decree are the work previously performed pursuant to the 1993 Consent Decree, performed pursuant to Administrative Orders by Consent relating to the Southern Plume and the bio-remediation studies, performed during any interim periods at the request of EPA or NHDES, and to be performed in the future under this Amended Consent Decree, and all Past and Future Response Costs reimbursed to EPA and the State pursuant to this Amended Consent Decree. The Work Settling Defendants have entered into a separate agreement that addresses the allocation among themselves of financial responsibility for the matters addressed in this Amended Consent Decree.

100. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Amended Consent Decree they will notify the United States and the State in writing no later than sixty (60) days prior to the initiation of such suit or claim.

101. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Amended Consent Decree they will notify in writing the United States and the State within ten (10) days of service of the complaint on them. In addition, Settling Defendants shall notify the United States and the State within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

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102. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiffs).

103. The Settling Defendants acknowledge that the previous contributions made by United Tanners, Inc., under the 1993 Consent Decree satisfy its obligations under this Amended Consent Decree, and that United Tanners, Inc., shall be entitled to the benefits received by Settling Defendants who are signatories to this Amended CD, including but not limited to those benefits pursuant to Section XXI (Covenants Not to Sue by Plaintiffs) and this Section.

XXIV. ACCESS TO INFORMATION

104. Work Settling Defendants shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Amended Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Work Settling Defendants shall also make available to EPA and the State, for purposes of investigation,

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information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

105. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Amended Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Amended Consent Decree shall be withheld on the grounds that they are privileged.

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106. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXV. RETENTION OF RECORDS

107. Until 10 years after the Work Settling Defendants' receipt of EPA's notification pursuant to Paragraph 54(b) of Section XIV (Certification of Completion), each Work Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Work Settling Defendants' receipt of EPA's notification pursuant to Paragraph 54(b) of Section XIV (Certification of Completion), Work Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature, or description relating to the performance of the Work.

108. At the conclusion of this document retention period, Work Settling Defendants shall notify the United States and the State at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Work Settling Defendants shall deliver any such records or documents to EPA or the State. The Work Settling Defendants may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Work Settling Defendants assert such a

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privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Work Settling Defendants.

However, no documents, reports or other information created or generated pursuant to the requirements of this Amended Consent Decree shall be withheld on the grounds that they are privileged.

109. Each Work Settling Defendant hereby certifies, individually, that it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

XXVI. NOTICES AND SUBMISSIONS

110. Whenever, under the terms of this Amended Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Amended Consent Decree with



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respect to the United States, EPA, the EPA Cincinnati Financial Management Officer, the EPA Regional Financial Management Officer, the State, and the Work Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044  
Re: DJ # 90-11-2-735

and

Director, Office of Site Remediation and Restoration  
United States Environmental Protection Agency  
EPA Region 1 – New England Region  
One Congress Street  
Suite 1100 (HIO)  
Boston, MA 02114

As to EPA:

Darryl Luce  
EPA Remedial Project Manager  
United States Environmental Protection Agency  
EPA Region 1 – New England Region  
One Congress Street, Suite 1100 (HBO)  
Boston, MA 02114

As to the EPA Cincinnati Financial Management Officer:

EPA Cincinnati Financial Office  
26 Martin Luther Drive  
Cincinnati, OH 45268

As to the EPA Regional Financial Management Officer:

David Tornstrom  
Regional Financial Management Officer

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United States Environmental Protection Agency  
EPA Region 1 – New England Region  
One Congress Street, Suite 1100 (MCO)  
Boston, MA 02114

As to the State:

Andrew Hoffman  
State Project Coordinator  
Dover Municipal Superfund Site  
Department of Environmental Services Waste Management Division  
P.O. Box 95, 29 Hazen Drive  
Concord, NH 03301-6509

As to the Work Settling Defendants:

Dean Peschel  
Environmental Projects Manager  
City of Dover  
288 Central Ave.  
Dover, NH 03820

XXVII. EFFECTIVE DATE

111. The effective date of this Amended Consent Decree shall be the date that this Amended Consent Decree is entered by the U.S. District Court for the District of New Hampshire, except as otherwise provided herein.

XXVIII. RETENTION OF JURISDICTION

112. This Court retains jurisdiction over both the subject matter of this Amended Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Amended Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Amended Consent Decree, or to effectuate or enforce compliance

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with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

**XXIX. APPENDICES**

113. The following appendices are attached to and incorporated into this Amended Consent Decree:

- “Appendix A” is the 2004 AROD.
- “Appendix A-1” is the 1991 ROD
- “Appendix B” is the 2007 SOW.
- “Appendix B-1” is the 1993 SOW.
- “Appendix C” is the description and/or map of the Site.
- “Appendix D” is the complete list of the Non-Owner Work Settling Defendants.
- “Appendix E” is the complete list of the Owner Work Settling Defendants.
- “Appendix F” is the complete list of Cash-Out Settling Defendants.
- “Appendix G” is a draft easement.

**XXX. COMMUNITY RELATIONS**

114. Work Settling Defendants shall propose to EPA and the State their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Work Settling Defendants under the Plan. Work Settling Defendants shall also cooperate with EPA and the State in providing information regarding the Work to the public. As requested by EPA or the State, Work Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the State to explain activities at or relating to the Site.

**XXXI. MODIFICATION**

115. Schedules specified in this Amended Consent Decree for completion of the Work may be modified by agreement of EPA and the Work Settling Defendants after review and comment by the State. All such modifications shall be made in writing.

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116. No material modification shall be made to the 2007 SOW without written notification to and written approval of the United States, the State, the Work Settling Defendants, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Except as provided in Paragraph 15 (Modification of the 2007 SOW or Related Work Plans), modifications to the 2007 SOW that do not materially alter that document, or material modifications to the 2007 SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii), may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Work Settling Defendants. Modifications to schedules specified in this Amended Consent Decree and 2007 SOW for completion of the Work shall not be considered material modifications.

117. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Amended Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

118. This Amended Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Amended Consent Decree disclose facts or considerations which indicate that the Amended Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Amended Consent Decree without further notice.

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119. If for any reason the Court should decline to approve this Amended Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIII. SIGNATORIES/SERVICE

120. Each undersigned representative of a Settling Defendant to this Amended Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Amended Consent Decree and to execute and legally bind such Party to this document.

121. Each Settling Defendant hereby agrees not to oppose entry of this Amended Consent Decree by this Court or to challenge any provision of this Amended Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Amended Consent Decree.

122. Each Settling Defendant shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Amended Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

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XXXIV. FINAL JUDGMENT

123. This Amended Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Amended Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained or referenced in this Amended Consent Decree.

124. Upon approval and entry of this Amended Consent Decree by the Court, this Amended Consent Decree shall constitute a final judgment between and among the United States, the State, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

\_\_\_\_\_  
United States District Judge

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THE UNDERSIGNED PARTY enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 13 May 2008

\_\_\_\_\_  
RONALD J. TENPAS  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

\_\_\_\_\_  
LAURA ROWLEY  
Trial Attorney  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. BOX 7611  
Washington, D.C. 20044-7611  
(202) 616-8763

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED PARTY enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

\_\_\_\_\_  
ROBERT W. VARNEY  
Regional Administrator  
New England Region  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

\_\_\_\_\_  
MAN CHAK NG  
Senior Enforcement Counsel  
New England Region  
One Congress Street, Suite 1100 (SES)  
Boston, MA 02114-2023  
(617) 918-1785



DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED PARTY enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR THE STATE OF NEW HAMPSHIRE

Date: 10/19/07

---

PETER C.L. ROTH  
Senior Assistant Attorney General  
State of New Hampshire  
Office of the Attorney General  
33 Capitol Street  
Concord, NH 03301

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR BFI Waste Systems of North America, LLC  
[Settling Defendant Name] as successor to Browning-Ferris  
Industries of New Hampshire, Inc.

Date: Jan. 4, 2008

Name (Print): Jolynn White  
Title: Secretary  
Address: 18500 N. Allied Way  
Phoenix, AZ 85054  
Telephone: (480) 627-2700

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): Curtis J. Shipley  
Title: Counsel  
Address: Ellis & Winters LLP  
100 North Greene Street, Suite 102  
Greensboro, NC 27401  
Telephone: (336) 217-4084

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

CVS Pharmacy, Inc. Successor by Merger to  
CVS New York, Inc. formerly known as  
FOR Melville Corporation  
[Settling Defendant Name]

Date: \_\_\_\_\_ by: \_\_\_\_\_

Name (Print): Zenon P. Lankowsky  
Title: Vice President & Secretary  
Address: c/o Michael B. Nulman, Esq.  
CVS Pharmacy, Inc.  
1 CVS Drive, Woonsocket, RI 02895  
Telephone: 401-765-1500

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): Michael B. Nulman  
Title: Senior Legal Counsel  
Address: CVS Pharmacy, Inc.  
1 CVS Drive  
Woonsocket, RI 02895  
Telephone: 401-270-2533

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR ElectroCraft New Hampshire, Inc.  
Formerly known as Eastern Air Devices, Inc.  
[Settling Defendant Name]

Date: December 26, 2007

\_\_\_\_\_  
Name: James Elsner  
Title: President  
Address: ElectroCraft New Hampshire, Inc.  
One Progress Drive  
Dover, NH 03820  
Telephone: 603-742-3330  
E-mail: [jelsner@electrocraft.com](mailto:jelsner@electrocraft.com)

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name: Michael J. Donahue, Esquire  
Title: Donahue, Tucker & Ciandella, PLLC  
Address: 104 Congress Street  
Portsmouth, NH 03801  
Telephone: 603-766-1686  
E-mail: [mdonahue@dtclawyers.com](mailto:mdonahue@dtclawyers.com)

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR Town of Madbury  
[Settling Defendant Name]

Date: 10/1/07

Name (Print): Bruce E Hodsdon  
Title: Selectman Chair  
Address: 13 Town Hall Rd  
Madbury NH 03823  
Telephone: (603) 742-7713

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR MOORE BUSINESS FORMS, Inc.  
[Settling Defendant Name]

Date: 11-5-07

Name (Print): Suzanne S. BETTMAN  
Title: EVP, General Counsel, Corporate Secretary  
Address: RR Donnelley  
111 S. Wacker Drive  
Chicago, IL 60606  
Telephone: 312-326-8233

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): Monica Roth Evans  
Title: VP & Associate General Counsel  
Address: 111 S. Wacker Drive  
Chicago, IL 60606  
Telephone: 312-326-7064  
email: monica.evans@RRD.com



DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR Siebe Incen behalf of Chromat Manufacturing Inc.  
[Settling Defendant Name]

Date: 12/12/07

Name (Print): Lynn Cordaro  
Title: VP Treas and Corp Controller  
Address: 33 Commercial Street  
Foxboro MA 02035  
Telephone: 508549 6120

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_



DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR WENTWORTH-DOUGLASS HOSPITAL  
[Settling Defendant Name]

Date: 09/14/2007

Name (Print): PETER E. WALKER  
Title: VP FINANCE / CFO  
Address: WENTWORTH-DOUGLASS HOSPITAL  
789 CENTRAL AVENUE  
DOVER, NH 03820  
Telephone: 603-740-2804

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR City of Dover  
[Settling Defendant Name]

Date: 9/22/07

Name (Print):

Title:

Address:

Telephone:

J. Michael Joyal Jr.

City Manager

288 Central Avenue  
Dover, NH 03820

603-516-6023

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print):

Title:

Address:

Telephone:

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR Bayhead Products Corp.  
[Settling Defendant Name]

Date: 9-26-07

Name (Print): Elissa Moore  
Title: President  
Address: 173 Crosby Rd.  
Dover, NH 03820  
Telephone: 603-742-3000

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

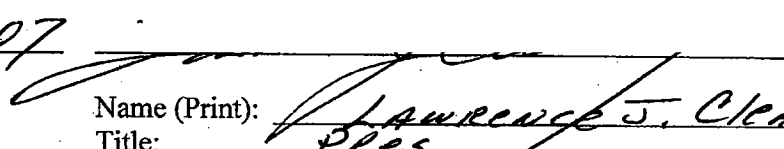
Name (Print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR Cleary Cleaners  
[Settling Defendant Name]

Date: 11-5-07

  
Name (Print): Lawrence J. Cleary  
Title: Pres.  
Address: 67 Allen St.  
Rochester, NH 03867  
Telephone: 603-332-2374

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

**CASH-OUT SETTLING DEFENDANT ONLY**

FOR DOVER TECHNOLOGIES INTERNATIONAL, INC.  
[Settling Defendant Name]

Date: 10/12/04

Name (Print): PETER J. MARSHALL  
Title: SECRETARY  
Address: 17542 E. 17<sup>TH</sup> STREET  
SUITE 470  
TUSTIN CA 92780  
Telephone: (714) 415-4110

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): KENNETH F. GRAY, ESQ.  
Title: PIERCE ATWOOD LLP  
Address: ONE MONUMENT SQUARE  
PORTLAND, ME 04101  
Telephone: (207) 791-1212

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

Executed 9/15/07

FOR

[Settling Defendant Name]

Date:

10/2/07  
mailed

Name (Print):

Sara Leporetti

Title:

see above

Address:

29 Industrial Park Drive  
Nashua, NH

Telephone:

603-742-6802

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print):

R. T. Phoenix, Esq. 10/2/07

Title:

Counsel

Address:

402 State St.  
Portsmouth, NH 02801

Telephone:

603-436-0664

**DOVER MUNICIPAL LANDFILL SUPERFUND SITE**  
**AMENDED CONSENT DECREE FOR RD/RA**

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

**CASH-OUT SETTLING DEFENDANT ONLY**

FOR General Electric Company  
[Settling Defendant Name]

Date: 10/16/2007

Name (Print): Richard P. Lubert  
Title: General Manager, Global EHS  
Address: 1 River Road, Bldg. 43  
Schenectady, NY 12345-6001  
Telephone: (518) 385-0380

**Agent Authorized to Accept Service on Behalf of Above-Signed Party:**

Name (Print): Kenneth F. Gray, Esq.  
Title: \_\_\_\_\_  
Address: Pierce Atwood LLP  
One Monument Square  
Portland, ME 04101  
Telephone: (207) 791-1212

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR Geo. J. Foster & Co., Inc.  
[Settling Defendant Name]

Date: \_\_\_\_\_

Name (Print): Patrice D. Foster  
Title: VP of Administration - Director  
Address: 150 Venture Drive  
Dover, NH 03820  
  
Telephone: (603) 742-4455

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): Gregory H. Smith, Esq.  
Title: McLane, Graf, Raulerson & Middleton, PA  
Address: 111 South Main Street  
Suite 500  
Concord, NH 03301  
Telephone: (603) 226-0400



DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR Northeast Container Corporation  
[Settling Defendant Name]

Date: September 24, 2007

Attorney-in-Fact for Rand Whitney Container Northeast LLC \*  
Name (Print): John F. McNabb  
Title: Vice President Finance, Rand Whitney Group LLC  
Address: Rand Whitney Group LLC  
1 Agrand Street  
Worcester, MA 01607-0562  
Telephone: 508-890-7004

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): Robert E. McDonnell, Esq.  
Title: Partner  
Address: Bingham McCutchen LLP  
150 Federal Street  
Boston, MA 02110  
Telephone: 617-951-8507

\*successor by merger to Northeast Container Corporation

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR PORTLAND GLASS  
[Settling Defendant Name]

Date: October 18, 2007 By: ✓

Name (Print): MIKE BIDWELL  
Title: VICE PRESIDENT  
Address: 1010 N. UNIVERSITY PARKS DRIVE  
WACO, TX 76707  
Telephone: (254) 745-2400

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): JAMES M. ("DUKE") JOHNSTON  
Title: VICE PRESIDENT AND GENERAL COUNSEL  
Address: 1010 N. UNIVERSITY PARKS DRIVE  
WACO, TX 76707  
Telephone: (254) 745-2410

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE  
[Settling Defendant Name] /

Date: 09/27/07

Name (Print): Robert A. Bersak  
Title: Assistant General Counsel  
Address: 780 No. Commercial Street  
Manchester, NH 03101  
Telephone: (603)634-3355

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): SAME AS ABOVE  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

**DOVER MUNICIPAL LANDFILL SUPERFUND SITE**  
**AMENDED CONSENT DECREE FOR RD/RA**

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR **UNITED PARCEL SERVICE, INC.**  
[Settling Defendant Name]

Date: 9/20/07

Name (Print): Kristin Holloway Jones  
Title: Attorney  
Address: ALSTON & BIRD LLP  
1201 West Peachtree Street, NE  
Atlanta, GA 30309-3424  
Telephone: (404) 881-7000

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): Kristin Holloway Jones  
Title: Attorney  
Address: ALSTON & BIRD LLP  
1201 West Peachtree Street, NE  
Atlanta, GA 30309-3424  
Telephone: (404) 881-7000

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR Varney's Cleaners and Laundercenter  
[Settling Defendant Name]

Date: 09/18/07

Name (Print): James W. Varney  
Title: Owner  
Address: P.O. Box 1401  
Dover, NH 03821-1401  
Telephone: \_\_\_\_\_

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): James W. Varney  
Title: Owner  
Address: P.O. Box 1401  
Dover, NH 03821-1401  
Telephone: \_\_\_\_\_

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

FOR Verizon New ENGLAND INC.  
[Settling Defendant Name]

Date: 9/18/07

Name (Print): JACQUE McCORMICK  
Title: Dir ENVIRONMENTAL MGMT  
Address: 700 Hidden Ridge (MC HQW01J05)  
Irving TX 75038  
Telephone: 972 718 6032

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

DOVER MUNICIPAL LANDFILL SUPERFUND SITE  
AMENDED CONSENT DECREE FOR RD/RA

THE UNDERSIGNED SETTLING DEFENDANT enters into this Amended Consent Decree in the matter of *United States v. City of Dover, et al.* (Civil Action No. 1:92-CV-406-M), relating to the Dover Municipal Landfill Superfund Site.

Waste Management of New Hampshire, Inc.  
FOR Waste Management of Maine, Inc.  
[Settling Defendant Name]

Date: 01/08/2008

\_\_\_\_\_  
Name (Print): Stephen T. Joyce  
Title: Director-CSMG  
Address: 4 Liberty Lane West  
Hampton, NH 03842  
Telephone: 603-929-5444  
E-mail: sjoyce@wm.com

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): Steven M. Morgan, Esq.  
Title: VP&Asst. General Counsel-Regulatory/HSE  
Address: 1001 Fannin, Suite 4000  
Houston, TX 77002  
Telephone: 713-512-6369  
E-mail: smorgan2@wm.com